



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 8, 1997

Mr. John T. Richards  
Assistant General Counsel  
Office of General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR97-1536

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 107499.

The Texas Department of Health (the "department") received a request for "the name, or names, of the individuals that filed the complaint against [a named business entity] for using packaged meat that was marked 'not for sale' in the business." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under section 552.103(a). This office considers contested cases conducted under the Administrative Procedure Act, Government Code chapter 2001, to be litigation under section 552.103(a). Open Records Decision No. 588 (1991) at 7. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

In this instance, you state that the department's Meat Safety Assurance Division of the Bureau of Food and Drug Safety is currently conducting an investigation of the incident, which is the subject of this request, to determine whether to pursue an administrative enforcement action. You claim that the department reasonably anticipates civil litigation pertaining to the investigation. After reviewing the documents submitted to this office in response to the request, we conclude that litigation is reasonably anticipated and that the requested information relates to the anticipated litigation. We, therefore, conclude that the city may withhold from disclosure the requested information under section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/alg

Ref.: ID# 107499

Enclosures: Submitted documents

cc: Mr. David Hammit  
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(w/o enclosures)